

No. 20,068

IN THE

United States Court of Appeals  
For the Ninth Circuit

JIM GARVISON, et al.,

*Appellants,*

VS.

NORMAN A. JENSEN,

*Appellee.*

BRIEF OF CARPENTER FUNDS ADMINISTRATIVE OFFICE OF NORTHERN CALIFORNIA, INC., LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA, LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA, CEMENT MASONS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA, CEMENT MASONS PENSION TRUST FUND FOR NORTHERN CALIFORNIA, CARPENTERS HEALTH AND WELFARE TRUST FOR SOUTHERN CALIFORNIA, CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA AND PACIFIC COAST SHIPYARDS METAL TRADES TRUST FUND, AS AMICI CURIAE IN SUPPORT OF APPELLANTS

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**BRIEF OF CARPENTER FUNDS ADMINISTRATIVE OFFICE  
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NIA, LABORERS PENSION TRUST FUND FOR NORTHERN  
CALIFORNIA, CEMENT MASONS HEALTH AND WELFARE  
TRUST FUND FOR NORTHERN CALIFORNIA, CEMENT  
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FOR SOUTHERN CALIFORNIA, CARPENTERS PENSION  
TRUST FOR SOUTHERN CALIFORNIA AND PACIFIC  
COAST SHIPYARDS METAL TRADES TRUST FUND,  
AS AMICI CURIAE IN SUPPORT OF APPELLANTS**

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**INTRODUCTORY STATEMENT**

By motion duly made and presented to this Court the undersigned herewith asks permission to file a brief as amicus curiae in the above-entitled matter. The undersigned is co-counsel with the Law Offices of

Johnson & Stanton of San Francisco for the Carpenter Funds Administrative Office of Northern California, Inc., for the Laborers Health and Welfare Trust Fund for Northern California, for the Laborers Pension Trust Fund for Northern California, for the Cement Masons Health and Welfare Trust Fund for Northern California, and for the Cement Masons Pension Trust Fund for Northern California; the undersigned is in addition co-counsel with Dillavou and Cox of Los Angeles for the Carpenters Health and Welfare Trust for Southern California and the Carpenters Pension Trust for Southern California; the undersigned is also co-counsel with Bogle, Bogle and Gates of Seattle for the Pacific Coast Shipyards Metal Trades Trust Fund.

The undersigned was granted leave by the United States Court of Appeals for the Eighth Circuit on August 18, 1964 to file an amicus curiae brief in *Blassie v. Kroger Co.*, .....F. 2d ....., 59 LRRM 2034. Thereafter the undersigned filed its brief amicus curiae in much the same form as is presented here and was gratified to find each one of its points sustained by the Court. It would be the undersigned's desire to aid this Court in the same manner.

It is desired, of course, to approve and incorporate everything which appellants have argued; but in light of the fact that this case raises questions of first impression for this Circuit Court of Appeals and has been only recently considered in one other circuit, it is desired to make additional argument to this Court and to inform it in some further detail.

1. IN RELATED FIELDS OF INTEREST, CALIFORNIA STATE LAW HAS NEVER FOUND ANY REASON TO LIMIT THE DEFINITION OF "EMPLOYEE" AS DID THE LOWER COURT.

The brief of Appellant argues to the Court that the broader view of the word "employee" is actually much more in harmony with the rightful and desirable ends Congress sought.<sup>1</sup> The narrow view of the lower Court is not only without foundation but, on the contrary, the broader view guarantees employee welfare and security much more fully. It is here proposed to call the Court's attention briefly to the fact that in those laws of the State of California which pertain to the same general area of interest, there has never been found any need to serve the ends of the respective statutes by recourse to such a narrow definition of "employee."

On the contrary, there is California law in the State Insurance Code which not only expressly includes the retired employee but also the trustees and their employes. Thus reads in part Section 10202.8 of the Insurance Code:

"§10202.8. A group life policy conforming to all of the following conditions may be issued to the trustees of a fund established by one employer, or by two or more employers in the same industry, or by an association of employers in the same industry, or by one or more labor unions, or by one or more employers and one or more labor unions or by an association of employers and one or more labor unions, to insure employees of the employers or members of the unions for the bene-

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<sup>1</sup>Brief of Appellants, pp. 19-20.

fit of persons other than the employers or the unions:

“(a) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term ‘employees’ shall include retired employees, and the individual proprietor or partners if any employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term ‘employees’ shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.”

The California Retirement Systems Law was added by 1949 legislation as a codification of the 1945 Retirement Systems Act. The definition of “employees” used therein is without apparent limitation just as the term appears in Sec. 302(c)(5):<sup>2</sup>

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<sup>2</sup>California Corporations Code, Division 3, §§28000, 28501, California Statutes 1949, c. 462, p. 805, §1 added as a codification to California Statutes 1945, c. 1035, p. 1996.



“§28002. As used in this division, ‘employees’ means the employees of any employer.”<sup>3</sup>

With such a definition presumably in mind, the California Legislature then went on to delineate the benefits available to retirees:<sup>4</sup>

“§28402. A retirement system may provide benefits on account of members retiring by reason of age or length of service or both, or on account of death, and may include benefits for sickness or accident disability, or medical and hospitalization expenses in connection with sickness or accident disability, or benefits in the form of equities which may include the right to receive a portion of the trust fund on severance of employment and the right to receive a percentage of the trust fund after the lapse of a period of service or of participation, or any or all of such benefits, and may include a stock bonus or profit sharing plan.”

It is a fair presumption that the State of California was as concerned with possible abuse and diversion as was the Congress in the federal tax and labor laws. Indeed, a perusal of the related sections to the above-cited California law makes this evident. Nowhere, however, is there the slightest inkling of an intent to limit the definition of “employee.” Nowhere is it deemed necessary to do so in order to attain the legislative ends desired and to secure against abuse. As with the Congress, so too the intent of the California Legislature is just the opposite; it wishes to extend a full schedule of benefits to retired employees.

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<sup>3</sup>id. §28002.

<sup>4</sup>id. §28402.

2. THE NARROW DEFINITION OF AN "EMPLOYEE" WITHIN THE UNDERSTANDING OF THE LOWER COURT'S DECISION IS TO BE CONTRASTED TO THE ECONOMIC REALITY OF PENSION AND HEALTH AND WELFARE FUNDS OF WHICH PRESUMABLY CONGRESS HAS ALWAYS BEEN AWARE.

Sections 23(a) and 23(p), 165, 101(16) of the old Internal Revenue Code are ample evidence that pension and health and welfare plans were already on the scene well before the advent of the 1947 labor legislation. And the incidence of such arrangements has mushroomed greatly. President's Committee on Corporate Pension Funds and other Private Retirement and Welfare Program, "Public Policy and Private Pension Programs", 3 CCH Labor Law Rptr. para. 8095.

As an aid to the Court in understanding the size and importance of such funds, it is proposed to delineate briefly the operations of the second largest plan west of Chicago. By so doing, it is hoped that renewed emphasis will be given to an appreciation of the size and economic and social importance of these plans; and, it is hoped that it will thereby become clearer that with knowledge of such common practice and importance Congress not only did not legislate in the way claimed by the lower Court but obviously has never seen fit to do so.

The Carpenter Funds Administration Office of Northern California, Inc., is the administrator of some five funds: Carpenters Health & Welfare Trust Fund for California, Carpenters Pension Trust Fund for Northern California, Four Bay Counties Carpen-

ters Vacation Trust Fund, Forty-Two Northern California Counties Carpenters Vacation Trust Fund, and Carpenters Apprenticeship and Training Trust Fund for Northern California.

On such funds as health and welfare and pension over 40,000 reports of hours worked by carpenters are received at the Fund's office each month from approximately 7,000 employers. Excluding dependents, some 34,000 carpenters are presently eligible for health and welfare benefits and eventually for pension benefits. The number of retirees alone is presently 2,187. Two hundred twenty-five thousand dollars (\$225,000.00) is being expended each month in payment of pension benefits.

The schedule of benefits is varied and comprehensive. The Pension Plan, entered into in 1958, provides for minimum payments of \$65.00 per month up to a maximum of \$125.00 a month to eligible retired carpenters, and some 175 officials of the unions. The Health and Welfare Fund, entered into in 1953, provides a surgical, X-ray, diagnostic, and hospital schedule for all eligibles, their dependents, officials of the unions and the administrative personnel of the Fund's office. Both of the Vacation Funds, entered into in 1957 and 1961, respectfully, pay out on a revolving basis, that is, they pay out whatever is received in a given year to eligible carpenters during the succeeding vacation periods. The Apprenticeship Fund represents a complex effort to meet the problems of unemployment and automation at the other end of the age spectrum.

In order to afford the Court some idea of the economic strength which secures these benefits, it can be noted that over 36 million dollars in "rolling" money comes in each year from contractors by way of contributions. The overall figure currently busy in investment is in excess of 55 million dollars.

It is self-evident that large funds such as these present much sturdier and efficacious means of investment and guaranteed return than a small group of union employees or fund administrative personnel could ever secure on a smaller autonomous level of operations. The ability to merge administration, investment, and actuarial experiences inevitably results in a much higher level of benefits to the employee, whether an employee of the contractor, the union or the fund.

It is to be noted that the same employers and employees are involved in these funds; and, therefore, the retirees, for example, are also benefiting from the Health and Welfare Fund.

It is also to be noted that as to officials of the union the contributions for them are made by their respective employer, viz, the union. Thus there is no confusion of the source of these contributions; there are three distinct entities, distinct not only legally but in their respective operations. The Fund is neither "the Union" nor "the contractor."

From the aforementioned complexity and commitment in which both employer and employees find themselves it becomes apparent that a narrow inter-

pretation of the word "employee" is totally out of joint with what has been the socio-economic reality for years. Thus it is that there has been an obvious commitment to a definition of the employer-employee relationship which has increasingly little relation to the time spent in actual work; or, to approach the matter from another direction, the forms of compensation have become myriad and attentive to the problems of old age and security. Despite the importance and size of funds such as the ones outlined above Congress has never deemed it necessary to draw a distinction such as drawn by the lower Court. On the contrary, it may be fairly noticed that the intent of Congress has been to applaud and support such far-reaching plans.

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### CONCLUSION

It is respectfully submitted that the decision of the lower Court be reversed.

Dated, San Francisco, California,

June 16, 1965.

Respectfully submitted,

CHARLES P. SCULLY,  
JOHNSON & STANTON,

DILLAVOU & COX,

BOGLE, BOGLE & GATES,

By CHARLES P. SCULLY,

*Attorneys for Amici Curiae.*

## CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

CHARLES P. SCULLY,  
*Attorney.*

CERTIFICATE OF SERVICE BY MAIL

(C.C.P. §1013A and 2015.5)

I, Aileen F. Quinn, declare that I am a citizen of the United States, over 18 years of age, a resident of San Francisco County, and not a party to the within action.

That my business address is 995 Market Street, San Francisco, California.

That a copy of the attached **BRICK OF CARPENTER FUNDS ADMINISTRATIVE OFFICE OF NORTHERN CALIFORNIA, INC., LABORERS HEALTH & WELFARE TRUST FUND FOR NORTHERN CALIFORNIA, LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA, CEMENT MASONS HEALTH & WELFARE TRUST FUND FOR NORTHERN CALIFORNIA, ET AL**

was served by me by placing said copy in an envelope addressed

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which envelope was then sealed and postage fully prepaid thereon and thereafter was on June 30, 19 65, deposited in the United States mail at San Francisco, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 1965.

/s/ Aileen F. Quinn

